



have not proceeded beyond pleadings and the City's and Citty's motion to dismiss, there is no legal prejudice to the parties and no conditions are mandated in this case. As stated in *Sisney v. Independent School District No. 3 of Tulsa County, et al.*, 2010 U.S. Dist. LEXIS, 9330 (N.D. Ok. Feb. 3, 2010):

“Under Rule 41(a)(2), “an action may be dismissed at the plaintiff's request only by court order, on terms that the Court considers proper.” Unless a defendant can show “legal prejudice from granting a plaintiff's request for voluntary dismissal, such requests should be ordinarily granted. *Ohlander v. Larson*, 114 F.3<sup>rd</sup> 1531, 1537, (10<sup>th</sup> Cir. 1997).”

Sisney points out that the Tenth Circuit has identified 4 non-exclusive factors that the trial court should consider in reaching its determination: 1) the opposing party's effort and expense in preparing for trial; 2) excessive delay and lack of diligence on the part of the movant; 3) insufficient explanation of the need for dismissal; and 4) the present stage of the litigation.

Collins filed his lawsuit against the City and Citty on July 20, 2009, by suing Citty in his official and individual capacities. Citty answer, in both capacities, on October 5, 2009.

Subsequent to Collins' May 14, 2010 amended complaint, Citty and the City filed their 12(b)(6) motions to dismiss and their answers. The litigation has not proceeded beyond the stage of pleadings and the court has not issued its preliminary scheduling order. As between Collins and the separate defendants, no discovery has been submitted. The court did allow limited discovery against the “Pennsylvania defendants” in order to address the issues of in personam jurisdiction of the defendants. Collins' motion is timely and there is no excessive delay or lack of diligence on his part.

For the foregoing reasons, Collins respectfully prays that the court grant his motion for dismissal without prejudice, finding that no conditions are warranted under the circumstances; and for all other relief to which he may be entitled.

Respectfully submitted for  
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**CERTIFICATE OF SERVICE**

We, the undersigned attorneys for Larry Collins, the Plaintiff herein, certify that the foregoing has been served on June 14, 2010, using the Court's CM/ECF system, which will send notification of the filing to:

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